



FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35846]

Metropolitan Transit Authority of Harris County, Tex.—Acquisition Exemption—Union Pacific Railroad Company (Right to Restore Rail Service Over a Railbanked Right-of-Way in Harris, Fort Bend, Austin, Wharton, and Colorado Counties, Tex.)

Metropolitan Transit Authority of Harris County, Tex. (METRO), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Union Pacific Railroad Company (UP) the right to restore rail service over a rail-banked right-of-way between milepost 3.48 near Bellaire Junction in Houston to milepost 61.2 near Eagle Lake, a distance of 57.72 miles, in Harris, Fort Bend, Austin, Wharton, and Colorado Counties, Tex.¹

In an application filed in Union Pacific Railroad Company—Abandonment—in Harris, Fort Bend, Austin, Wharton, and Colorado Counties, Tex., AB 33 (Sub-No. 156) (STB served Aug. 20, 2000), UP was authorized to abandon the line between milepost 3.48 and milepost 52.9. Subsequent to that filing, UP and Metro reached an agreement for rail banking of that segment of the line. The agreement was accompanied by a deed without warranty, pursuant to which UP conveyed the railroad easement,

¹ A related notice of exemption was filed in Docket No. FD 35847, Fort Bend County Toll Road Authority—Acquisition Exemption—Metropolitan Transit Authority of Harris County, Tex., wherein Fort Bend County Toll Road Authority seeks to acquire from METRO the right to restore rail service over a portion of the rail-banked right-of-way from the Bellaire Branch's milepost 20, approximately 2,020 feet east of the Harris County and Fort Bend County line, to milepost 61.2 near Eagle Lake, in Colorado County, Tex. The related notice will be addressed in a separate decision.

together with all of UP's other rights, title, and interests in the right-of-way to METRO, subject to certain conditions and exceptions.

In a notice of exemption filed in Union Pacific Railroad Company—Abandonment Exemption—in Colorado and Wharton Counties, Tex., AB 33 (Sub-No. 253X), (STB served Feb. 15, 2008), UP was authorized to abandon the 8.3-mile portion of the line known as the Chesterville Industrial Lead, extending from milepost 52.9 near Chesterville to milepost 61.2 near Eagle Lake, in Colorado and Wharton Counties, Tex. UP and METRO subsequently reached an agreement for rail banking of this segment of the line. This agreement was likewise accompanied by a deed without warranty, pursuant to which UP conveyed the railroad easement, together with all of UP's rights, title, and interests in the right-of-way to METRO, subject to certain conditions and exceptions.

Thus, METRO is the interim trail user and obtained from UP its consent to seek Board approval to acquire the rights to restore rail service over both segments of the line. METRO explains that it did not know, at the time, that Board authorization was necessary for it to acquire the right to restore rail service. METRO now, after the fact, invokes the Board's authorization for that acquisition through a notice of exemption.

In King County, Wash.—Acquisition Exemption—BNSF Railway Company, FD 35148, slip op. at 3-4 (STB served Sept. 18, 2009) (King County), the Board granted an individual exemption authorizing the conveyance of the right to restore rail service on a line to a county, explaining that the right to reactivate a rail-banked line is not an exclusive right and would not preclude any other service provider from seeking Board authorization to restore rail service over the rail-banked line if the county did not do so. In King County, slip op. at 4 n.5, both the county acquiring the right and the rail carrier

selling that right “made clear that [the rail carrier did] not wish to retain any rights related to the segments.” Likewise, here, the notice indicates that UP did not wish to retain rights related to the line because, by a deed without warranty, UP conveyed to METRO both the right-of-way itself and the right to restore service over the right-of-way.

The transaction is expected to be consummated on or after August 28, 2014 (30 days after the exemption was filed).

METRO certifies that its projected annual revenues from the acquisition involved in this proceeding do not exceed those that would qualify it as a Class III carrier.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than August 21, 2014 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35846, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Sean McGowan, Thompson Coburn, LLP, 1909 K St., N.W., Suite 600, Washington, DC 20006.

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Dated: August 11, 2014.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Derrick A. Gardner

Clearance Clerk

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